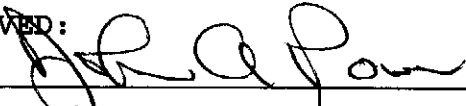


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	APPROVED: 	
Initiating Department: Office of the Director	Issue Date 8/29/08	
Subject: Legal Enforcement of the Maricopa County Environmental Health Code	Next Review 08/10	

I. PURPOSE

To establish uniformity of legal actions pursuant to the Maricopa County Environmental Health Code (MCEHC), Arizona Revised Statutes (ARS), Arizona Administrative Code (AAC) and delegated responsibilities from the Arizona Department of Environmental Quality (ADEQ) and Arizona Department of Health Services (ADHS). This policy is intended solely as guidance for Department personnel, to create uniformity and consistency regarding the enforcement implementation of the MCEHC, ARS, and AAC.

This policy is not intended and may not be used to create rights enforceable by any party. This policy is not intended to reduce the enforcement discretion of the Department in any manner. Deviation from this policy will not prevent the Department from pursuing an enforcement action that is otherwise appropriate to the violation. This policy may be changed at any time without public notice.

II. BACKGROUND

Establishment suspension/revocation proceedings, citation issuance requirements, and other legal action procedures are crucial for gaining compliance to the MCEHC. Cease and Desist Orders are also essential for MCEHC compliance. Legal enforcement is implemented to eliminate situations of potential harm to public health. Maricopa County Environmental Services Department personnel enforce numerous MCEHC regulations. This policy provides procedural guidance for enforcement implementation.

III. REFERENCE

Maricopa County Environmental Health Code
Arizona Revised Statutes (ARS)
Arizona Administrative Code (AAC)
ADEQ Compliance and Enforcement Handbook

*This Policy and Procedure supersedes DPPN 10-04-16 BS, dated 11-19-04.

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IV. APPLICABILITY

This Policy and Procedure applies to all personnel in the Environmental Services Department.

V. PROCEDURES

The Department responds to violations of the MCEHC by utilizing both informal and formal administrative procedures and judicial enforcement actions. At such time Department personnel determine enforcement action is warranted, they will need to complete a Legal Action Request form (Appendix A), regardless if the action is formal or informal. The request should then be forwarded with all applicable evidence (photographs, correspondence, files, videos, witness statements, department reports, records, scientific test results) to the employee's supervisor and then to the Division Manager to obtain the required signatures and approvals.

A. INFORMAL ENFORCEMENT PROCEDURES

1. Probationary Letter

When repeated and/or continued violations are encountered within any permitted facility, a probationary letter will be issued to the permit holder, prior to initiation of a formal permit revocation procedure or other enforcement action. This letter will state that failure to make corrections may result in actions taken to revoke the permit and/or other enforcement proceedings. The probationary period is 6 months for all food establishment permits and one year for all other facilities.

- a. A probationary letter will be sent to a food or food production establishment as outlined in Environmental Health Division Policy EH-IN-27 (Appendix B).
- b. A probationary letter will be sent to any other permitted establishment on which three consecutive inspections or reinspections document the same critical or serious violation.

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c. If a probationary letter has been issued within the previous six months, and serious, repetitive or continued MCEHC violations reoccur, action will be initiated by the Division to revoke the establishment's operating permit.

d. The Environmental Health Supervisor will review the establishment file to assure that the action is appropriate and that the file is complete.

2. Letter of Outstanding Violation (LOV)

Water and Waste Management (WWM) Division uses a Letter of Outstanding Violation(s) (LOV), pursuant to ARS 41-1009, to inform an owner/operator that MCEHC violations have been identified. This letter will clearly identify the rule or law the Department alleges has been violated as well as the date and the violation description. In addition, the letter will state that failure to make corrections will result in further legal action and/or steps to revoke the operating permit.

a. A LOV letter will be sent to any permitted establishment within the Water and Waste Management Division where inspections document a violation.

b. If a LOV letter has been issued within the previous six months and violations of the MCEHC reoccur, the WWM Division will initiate further legal action.

c. Prior to approving further legal action or revocation, the WWM Division Manager or other assigned personnel may accompany the inspecting official on a final inspection of the establishment to verify existing violations.

d. The WWM Division Manager will review the establishment file to assure that the action is appropriate and that the file is complete.

B. FORMAL ENFORCEMENT ACTIONS

At such time it is determined that informal enforcement action has not resulted in permanent correction of a

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violation, the Department will seek formal enforcement action(s) to correct any violations of the MCEHC.

After receiving approval from the Division Manager, a Legal Action Request Form, related documents, and evidence should be forwarded to the Enforcement Program. Once the request is reviewed and approved by the Enforcement Program, the requested legal document will be prepared and presented to the Department Director for approval and signature. If the legal action request is denied, Enforcement personnel will meet with the Department Director to determine the next course of action.

All enforcement actions will be served to the holder of the permit, or the person in charge, as outlined in Chapter I, Regulation 7.b.(5). A notice provided for in the MCEHC is properly served when it is delivered to the holder of the permit, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit.

The Department will utilize various methods of formal enforcement response to gain compliance with the MCEHC. Depending on the type of permit, the public health nuisances presented, and the history of the violation, the following enforcement actions may be initiated:

1. Permit Suspension

Assigned personnel will utilize suspension procedures as outlined in Chapter I, Regulation 7 of the MCEHC in cases of severe violations that present an imminent hazard to public health or the environment in a permitted establishment.

Upon issuance of a Notice of Suspension (Appendix C), the holder of the permit may immediately move to vacate the Notice of Suspension and the Director shall hear such motion within five (5) days.

In no event shall a Notice of Suspension remain in effect for more than twenty-five days. If violations are not corrected after verification during a reinspection or a hearing is not requested within the

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twenty-five (25) day period, the regional office or assigned program shall file a revocation request with the Program Supervisor and Division Manager.

a. Procedures:

1. Permit Suspensions for Swimming Pools or other bathing facilities will be conducted as outlined in DPPN 20-07-02 (Appendix D).
2. For all other permits, a Notice of Suspension of an operating permit shall be issued to the holder of the permit with the Inspection form noting an Immediate Suspension of the Permit. The Notice of Suspension form may be given to the owner or their on-site representative (person in charge). The assigned inspector will fill out the header of the form, print their name and list their office or county cell phone number. The top box is checked and the owner or their representative signs the form and lists their title. If no responsible person is available to accept the notice, the Notice of Suspension should be mailed to the owner along with a copy of the inspection and cover letter via Certified Mail; in this case the second box on the Notice of Suspension form is checked.
3. Once the paperwork is completed on site (in cases where a person in charge is available), the facility can be posted closed with the Closed sign (Appendix E). If an on-site contact is not available, the facility must be posted closed with the appropriate sign.
4. Note: The 25 day due process begins on the date when the certified mail receipt is accepted or the Notice of Suspension is signed. In cases where the certified mail is not signed or delayed, the Enforcement Program shall be contacted.
5. Enforcement Program staff will be notified of all permit suspensions via e-mail or other means. At the end of the 25 day period, unless

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otherwise notified and/or an inspection appears in the computer system that identifies that the suspension has been lifted, Enforcement program staff will automatically begin permit revocation proceedings for failure to properly vacate a suspension order.

2. Notice to Appear and Complaint (Citation)

A citation may be issued for severe or repetitive violations of MCEHC as outlined in Chapter I, Regulation 11 when written notification fails to achieve compliance. In addition, a criminal citation may be issued to a permitted establishment when other administrative actions fail to achieve compliance. A citation may be issued to mobile food vendors (including Seasonal) for violations of MCEHC without prior written or verbal notice.

A person who violates Maricopa County Environmental Health Code regulations is guilty of a class 3 misdemeanor if the person holds a valid permit issued by the Department or a class 2 misdemeanor if the person does not hold a valid permit (A.R.S. 36-183.03, 36-183.06, 36-183.07, and MCEHC Chapter I, Regulation 11).

a. "Short Form" Citations (written directly to a Justice Court - Appendix F):

1. Inform all individuals responsible for causing the violation of the associated health significance.
2. Obtain a valid identification (Driver's license or other government issued ID) that includes the full name, date of birth and physical description of the violator. When valid identification cannot be obtained and obtaining this information is not an immediate issue, contact Enforcement for assistance with identifying the violator. Enforcement will search public records such as driver's license, auto registration, property ownership, etc. At times when obtaining identification is

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immediately necessary (i.e. mobile food inspections or special events) contacting the local police department or Sheriff's Office may be an option.

3. Ensure the citation information is accurate, complete, and legible. Cite the appropriate chapter, section, and regulation number of the MCEHC on the Notice to Appear and Complaint form. Include a brief description of the violation.
4. Provide the appropriate Justice Court, arraignment date and time on the citation. Refer to the Justice Court arraignment schedule and precinct boundary map for relevant information.
5. Obtain the violator's signature and provide them the pink copy of Citation.
6. Complete a Department Report (Appendix G) that describes in detail the chronological collection and documentation of evidence supporting the violation.
7. Distribute the white and blue citation copies and the completed Investigative Report Form to the designated Justice Court within three working days after issuance of a citation. In addition, have the Justice Court date and time stamp the yellow copy at the time of filing.
8. Distribute to Enforcement the yellow citation copy, completed Investigative Report Form, and all evidence supporting the violation, e.g. photographs (Digital photos are acceptable), videos, witness statements, correspondence, reports, records, and scientific test results within 7 days from issuance of the citation.
9. After the citation is filed in Justice Court, Enforcement is responsible for tracking the status of the citation. Appropriate division personnel will be notified by Enforcement regarding court or pre-trial appearances (if necessary) and final disposition of the citation.

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b. "Long Form" Citations (written for submission to the County Attorney's Office prior to submittal to the Court):

1. Complete a Department Report (Appendix G) that describes in detail the chronological collection and documentation of evidence supporting the violation.
2. For all long form citations, the Department Report (DR) number will be the permit number or complaint number. If a second long form is issued for the same permit or complaint, you will need to add a letter to the end of the permit number (i.e. DRSG26270, DRSG26270B).
3. The Charges Requested section must clearly indicate MCEHC violation and then a description of the violation itself.
4. Ensure the information is accurate, complete, and legible. Cite the appropriate chapter, section, and regulation number of MCEHC in the written description of the violation(s). Include a detailed description of the violation and what occurred during the inspection and/or investigation. The narrative must summarize the inspection report. Additional detail is needed to tell a "story", but all violations noted in the narrative must also have been listed on the inspection report. Make sure dates on the DR match the dates on the pictures, inspection reports, etc.
5. Lastly, make sure all the inspectors who were witnesses to the violations have submitted an updated resume. This will be included on the last page of the DR.
6. Upon completion of the required reports and documents, forward all applicable evidence (photographs, correspondence, files, videos, witness statements, department reports, records, and scientific test results) to the employee's

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supervisor and then to the Division Manager to obtain the required approvals.

3. Cease and Desist Order

When the Director has reasonable cause to believe that a person is maintaining a nuisance or engaging in any practice contrary to the health laws or rules of the state, the Director shall forthwith serve upon such person by certified mail or personal service a Cease and Desist Order. The Order will state that within fifteen (15) days after receipt of the Order the person to whom it is directed may request the Director to hold a hearing.

When a Cease and Desist Order is necessary, the Department personnel or assigned inspector shall give written notification to the owner/operator of the facility or person engaging in any practice contrary to the health laws or rules of the state to discontinue operation immediately, until such time as a valid permit and/or the required approvals are obtained.

If an imminent health hazard exists, a supervisor shall be notified immediately. When an imminent health hazard exists at a non-permitted establishment, all paperwork may be hand carried (steps a through d) to Enforcement in order to expedite the Cease and Desist Order.

If a hearing request has not been received within the fifteen (15) day window and the person to whom the Order is directed fails or refuses to comply with the Cease and Desist Order, Enforcement will consult with the Director and/or Deputy County Attorney to determine the appropriate enforcement response.

In situations where Enforcement is unable to obtain mail service delivery within 10 days of sending to a food establishment, the facility will be posted with a yellow "Public Notice" sign (Appendix H) and a copy of the Cease and Desist Order will be hand delivered by Enforcement Program Staff. The sign will remain in place until approved for removal by the Department Director, Deputy Director, or Enforcement Program

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staff. A citation may be issued for removal of the notice sign.

4. Abatement of Nuisance

Pursuant to A.R.S. 36-602 and Chapter I, Regulation 14 of MCEHC, the Department may take action to abate or remove a nuisance or source of filth from a property. The Director shall issue an Assessment Statement to the owner of the property on which such nuisance or source of filth was located.

If the property owner does not pay the assessed costs after the time for payment provided in Chapter I, Regulation 14, the Director may assess the lots or tracts of land on which the nuisance was abated or removed.

5. Referral to ADEQ and/or State Attorney General

In carrying out the duties under the Delegation Agreement between the Arizona Department of Environmental Quality and Maricopa County, the Department shall comply with the provisions of the Delegation Agreement and observe and enforce the rules of ADEQ and the laws of the State of Arizona pertaining to the preservation of public health and protection of the environment.

Maricopa County can independently initiate enforcement action pursuant to its own authority. Under specific circumstances, Maricopa County may coordinate with or refer enforcement activities to ADEQ and/or the State Attorney General. The Division Manager and/or Enforcement Manager, pursuant to approval by the Department Director, shall initiate such decisions to refer/coordinate as needed.

6. Notice of Violation and Demand for Compliance

Pursuant to ARS 36-183.04, when a violation of MCEHC or a sanitary ordinance or regulation is identified by Department personnel or other assigned personnel, the Department may issue a Notice of Violation and Demand for Compliance (NOV). An NOV will be utilized when a

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public health nuisance, source of filth, or cause of sickness exists on private, commercial, or municipal property and the Department determines that a criminal citation is not the most expeditious way to gain compliance.

a. Procedures:

1. The NOV will outline with reasonable specificity the nature of the violation and the deadline for compliance. The NOV shall also state that the respondent may request a hearing within 15 days after service.
2. Unless the respondent either complies within the stated deadline or requests a hearing within fifteen days after service of the NOV, the Director may issue a Compliance Order that is consistent with the terms of the NOV.
3. In most cases, an NOV will not include civil penalties. However, if an NOV or other enforcement action has been taken against the property owner for the same type of violation within the last five (5) years or the action demonstrates a willful or serious act, penalties will be included in the NOV. In determining the amount of a civil penalty under this section, refer to section C (1) of this policy.
4. All penalties collected pursuant to this section will be deposited in the general fund of the County.
5. All NOV's will be recorded against the property with the Maricopa County Recorder's Office. Once the NOV is lifted and the violations are corrected, a Release of Notice of Violation will also be recorded with the Maricopa County Recorder's Office.

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7. Permit Revocation

A permit revocation will be initiated for serious or repeated violations of any of the requirements of MCEHC or for interference with the regulatory authority in the performance of duty as described in Chapter I, Regulation 7.b. of MCEHC.

a. Procedures:

1. The Director shall notify, in writing, the holder of the permit that the permit shall be revoked at the end of twenty (20) days following service of the notice, unless a written request for a hearing is filed with the Director within such twenty (20) day period. The Permit Revocation letter shall list the specific reasons for the revocation.

In situations where Enforcement Program staff is unable to obtain mail service delivery within 10 days of mailing to food establishments, the facility will be posted with a yellow "Public Notice" sign (Appendix H) and a copy of the Revocation Notice will be hand delivered by Enforcement Program Staff. The sign will remain in place until approved for removal by the Department Director, Deputy Director, or Enforcement Program.

2. Once the permit holder receives the Initial Permit Revocation Notice, the establishment will be posted with a yellow "Public Notice" sign (Appendix H) if contact is not initiated with the Department within 10 days of receipt. Enforcement Program staff will have the primary responsibility for posting the notice in accordance with Chapter I, Regulation 7.b.(3) of MCEHC. A citation may be issued for removal of the notice sign without Department approval.
3. If the permit holder does not file a request for hearing within the twenty (20) day period, the revocation of the permit will become final. If a request for hearing is filed within the

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prescribed time, a hearing shall be conducted by a Hearing Officer appointed by the Director. The hearing shall be conducted in accordance with requirements of A.R.S. Title 41, Chapter 6, Article 10.

4. If the legal action request indicates a possible Stipulated Settlement Agreement could be reached and the licensee agrees to sign such an agreement rather than go to hearing, the stipulation period will generally be six (6) months for general permits and twelve (12) months for swimming pool permits. During this period, senior Department personnel or the Area Manager/Supervisor will conduct inspections at the facility every six to eight weeks. All Stipulated Settlement Agreements will also include a monetary penalty in the amount of $\frac{1}{2}$ the current permit fee.
5. When Stipulated Settlement Agreement conditions are not met, a legal action request for Final Revocation will be forwarded through proper channels to the Director. Unless hand-delivered to the establishment, the Director will send a certified letter, return receipt requested, to the owner stating that the permit has been revoked and the facility must cease operating upon receipt of the letter.
6. When a permit is revoked, Enforcement Program staff will notify the regional office that the return receipt was received or the Final Revocation Notice was hand-delivered. Once received, the facility will be posted with a red "CLOSED" sign as outlined in Chapter I, Regulation 7.b.(4) of MCEHC. Enforcement will have the primary responsibility for posting the sign on the front door or front window in a manner so that the "CLOSED" sign is clearly visible to anyone entering the facility. A citation may be issued for removal of the notice sign without Department approval.

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7. Following revocation, if the facility continues to operate, Enforcement will determine the most expeditious legal remedy to resolve the violation.

8. Compliance Order

Pursuant to ARS 49-354 for the enforcement of rules and regulations for Public Drinking Water Systems, and 36-183.04 for the enforcement of public health nuisances, the Director may issue a Compliance Order and impose a civil administrative penalty. Monetary Penalties are included in all Compliance Orders and will be calculated using the philosophy described in section C (1).

9. Injunctive Relief; Consent Decree; Civil Penalties

Pursuant to A.R.S. 36-183.05, if the Director has reasonable cause to believe that a person violated any sanitary ordinance, regulation or order, or the Department determines that immediate action or correction is needed for any imminent health hazard that threatens the public or the environment, the Director through the County Attorney may file an action in the Superior Court:

- a. For a temporary restraining order, a preliminary or permanent injunction or any other appropriate relief necessary to enjoin the person from further violations and to protect public health or the environment.
- b. To compel compliance with a nuisance abatement order or a compliance order, including the collection of civil penalties assessed under that order.
- c. For civil penalties, the Department will seek the maximum amount as allowed by law for any case that is referred to the Maricopa County Attorney's Office.

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C. OTHER PROCEDURES

1. Penalty Calculations

All penalties for NOV's and Compliance Orders will be calculated using the format and philosophy described below. The goal of any monetary penalty is to offset any type of economic gain and also to create a deterrent to future violations of the Maricopa County Environmental Health Code and/or other relevant rules and regulations.

Penalties will be calculated based on the following rules and regulations:

Drinking Water Systems:	ARS 49-354
Public Health Nuisances:	ARS 36-183.04

All penalties will be calculated at the maximum rate allowed by law and then also at a "penalty" rate. Any action that requires a referral to court, the Department will seek to recover the full statutory amount.

a. Procedures

1. Calculate the maximum penalty as allowed by law for a specific violation. Each violation type should be added independently within the calculations. However, multiple violations of the same type can be combined into one section.
2. Next, take the total penalty amount and reduce by 50%. This is the base penalty rate.
3. At this point, you will then add factors to the individual penalty types. Factors will be calculated as follows:
 - a. Culpability Factors (cumulative in nature, each factor will be calculated based on the total of the previous base penalty and any additional factors):

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1. Seriousness of the violation: Who is the population at risk and what are the acute or immediate threats of the risk? If this is found to be acute or an immediate threat, increase the penalty by 30%.
2. History of repeated violations: Review the file and or other records for the last five years. If you find any of the following, increase the total amount as described below:
 - a. Notice of Violation - 10% for each NOV
 - b. Compliance Order or previous Settlement agreement - (20% for each Order or agreement)
 - c. Emergency Order - 20% for any type of emergency injunction or Order.
3. Record: Any evidence that supports that the establishment violated other environmental rules including federal, Arizona, or local rules, increase total penalty by 10%.
4. Recalcitrance - Any refusal to comply with rules or clear pattern of non-compliance that can be established. Deliberate attempts to extend the negotiating process will be considered evidence of recalcitrance. Increase the total penalty by 10%.
5. Duration: Any violation continued over a period of time with the responsible party's knowledge and no or minimal effort has been made to correct the violation, increase the total penalty by 10%.
6. Other Bad Faith: Any acts of willful or gross negligence or documented past

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efforts to acquaint the violator with applicable requirements will increase the total penalty by 10%.

b. Mitigating Factors (to be calculated after the base penalty and any culpability factors have been determined):

1. Good Faith: Timely corrective actions or attempts to correct that were hindered by factors outside the violator's control. Reduce the total penalty by 10%.
2. Fault Shared: If fault is shared by other parties, the total penalty may be reduced by up to 50%.
3. Ignorance: This factor is NOT to be considered when calculating a penalty.

2. Supplemental Environmental Projects (SEPs)

Any time a settlement calculation is over \$10,000, the Department is willing to look at Supplemental Environmental Projects (SEPs) in lieu of some portion of the penalty. Any request for a SEP will require the violator to meet the requirements for a SEP as outlined in the ADEQ Compliance and Enforcement Handbook, Chapter 8, page 8-3. Generally speaking, the Department does not wish to use SEPs but will do so when the suggested project is deemed to improve the education/compliance base of the citizen's of Maricopa County and/or the regulated community.

APPENDICES:

- Appendix A - Legal Action Request Form
- Appendix B - Environmental Health SOP EH-IN-27
- Appendix C - Notice of Suspension
- Appendix D - Department Policy 20-07-02
- Appendix E - Closed Sign
- Appendix F - Notice to Appear
- Appendix G - Department Report Form
- Appendix H - Public Notice Sign

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DISTRIBUTION:

Business Operations Division
Environmental Health Division
Office of the Director
Vector Control Division
Water & Waste Management Division

CAUSE #:

LEGAL ACTION REQUEST FORM

REQUEST DATE:	
PROGRAM OR OFFICE NAME:	
DISTRICT #:	
EHS NAME:	
WITNESS(ES):	
ESTABLISHMENT :	
ADDRESS:	
CITY, STATE, ZIP:	
PERMIT OR CC#:	
INSPECT DATE(S):	
REASON FOR ACTION:	
ACTION TYPE:	
LETTER TYPE:	ENGLISH ENGLISH/ SPANISH ENGLISH/CHINESE
COMMENTS or STIPULATION ITEMS:	

LEGAL ACTION REQUEST REVIEW & APPROVALS

	NAME	Approved	Disapproved	Date Signed
Supervisor:				
Div. Manager:				
Comments:				
Enf. Specialist:				
Dept. Director:				
Comments:				

**MARICOPA COUNTY
ENVIRONMENTAL SERVICES DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION**

Number EH-IN-27

Revised August 9, 2005

STANDARD OPERATING PROCEDURE

**CORRECTION OF VIOLATIONS AND ENFORCEMENT GUIDELINES FOR FOOD SERVICE
ESTABLISHMENTS**

- I. **PURPOSE:** To clarify use of legal actions as described in DPPN: 10-97-16 Legal Enforcement of the Maricopa County Environmental Health Code (MCEHC) for use in food service establishments. To ensure uniformity in regard to use of enforcement actions to gain code compliance for food service establishments.
- II. **REFERENCES:**
 - A. DPPN: 10-04-16 Legal Enforcement of the MCEHC (Department Policy)
 - B. Maricopa County Environmental Health Code, Chapter 8
 - C. Maricopa County Environmental Health Code, Chapter 1, Regulation 7
- III. **APPLICABILITY:** Applies to all Environmental Health Division personnel involved with Environmental Health Programs.
- IV. **DEFINITIONS:**

Gross Insanitary Conditions: violations significant enough to warrant suspension of permit as defined in code (see MCEHC Chap. 8, Sec. 2, 8-404.11) ..

Repeat Violation: a violation which appears on an inspection or reinspection which immediately follows the inspection in which it was written. A violation that is corrected at time of inspection or is corrected on reinspection is still considered a repeat violation if it appears on the next comprehensive inspection following correction.
- V. **BACKGROUND:** Suspension or revocation of the permit of a food service establishment can be a critical enforcement measure used to gain compliance with MCEHC. The current Department Policy is very clear in outlining procedures involved in taking these actions. With the implementation of the MCEHC and pending changes to the MCEHC, sections of the Department policy are no longer applicable, especially those sections which refer to inspection scores. The MCEHC states that the regulatory authority may suspend or revoke a food establishment

license if the license holder violates the code or provides false information

on a license application. It also states that critical violations must be corrected at the time of inspection unless, considering the nature of the potential hazard involved, the regulatory authority agrees to a longer time frame not to exceed 10 days. The Department policy is also vague in defining the measures used in revocation of a food permit due to repetitive violations. This SOP provides guidance in specifying time frames for correction of critical violations and implementing the administrative processes of permit suspension and permit revocation as described in the Department policy. The old terminology of 'warning letter' to describe the probationary period is being eliminated. The process described below has three steps: warning status, probation status, and revocation action.

VI. **POLICY:** Employees of this Division who are involved in Environmental Health Programs shall read, understand, and comply with this procedure as it applies to them.

VII. **PROCEDURES:**

Correction of Violations -The MCEHC specifically notes that license holders shall correct all critical violations at the time of inspection if possible. The regulatory authority has the ability to allow correction periods of up to ten days as appropriate to the hazard or complexity involved in the critical violation. An establishment scoring 80 points on a comprehensive inspection requires warning status, a warning comment, and a mandatory reinspection (see C.1. below). A reinspection must be conducted within 24 hours after the deadline for correction has passed. Failure to correct violations in the timeframe specified by the regulatory authority may result in suspension or revocation of a food establishment permit.

1. **Immediate Correction** - Items of this nature are considered imminent hazards to public health or the environment. If these items cannot be corrected at the time of the inspection, immediate suspension of the permit is required (see B below). Violations or situations which require immediate correction or permit suspension include:

- Sewage backing up in the establishment. Note: if sewage is backing up outside an establishment rather than in the kitchen due to removal of a cleanout or other plumbing fixture permit suspension is still appropriate.
- Extended interruption of electrical or water service
- Inability to maintain potentially hazardous foods at proper temperatures
- Apparent outset of a foodborne outbreak. Note: this requires consultation and approval of the foodborne illness program

- Flood
 - Fire or activation of a fire suppression system
 - Misuse of poisonous or toxic materials
 -
 - Other gross insanitary occurrences, conditions, or other circumstances that may endanger public health, as approved by the Regional Office/Program Manager or Regional Office/Program Lead Specialist
2. **Correction within 24 hours** - Items of this nature require reinspection to ensure compliance with the MCEHC. Failure to correct violations of this nature may result in legal action leading to revocation of the permit (see C below). Violations or conditions which require correction within 24 hours include:
- No hot water under pressure available to the establishment
 - No sanitizer available in the establishment for sanitization of utensils. Note: if an in use dishwasher is not sanitizing but a three compartment sink is available for sanitizing a violation should be written but it may be considered corrected at the time of inspection through use of the dish sink.
 - Inoperative hot or cold holding unit(s) or refrigeration unit(s) resulting in potentially hazardous foods out of temperature.
3. **Correction within 10 days** - Items of this nature include all other critical violations not mentioned above or corrected at the time of inspection and require reinspection to ensure compliance with the MCEHC. Failure to correct violations of this nature may result in legal action leading to revocation of the permit (see C below).
4. **Correction within 90 days** - Items of this nature include all non-critical violations and do not routinely require reinspection. As per the MCEHC, an extension beyond 90 days for non-critical items requires a written schedule of compliance from the permit holder and no health hazard may exist or result from allowing an extended schedule for compliance. Failure to correct violations of this nature does not normally result in further legal action.

Permit Suspension

1. Permit suspension does not normally require verification of existing conditions by the Regional Office/Program Manager or Regional Office/Program Lead Specialist if an establishment closes voluntarily. In cases where the establishment refuses to close voluntarily, verification by the Regional Office/Program Manager or Regional Office/Program Lead Specialist is required.

Permit Revocation - the permit revocation procedure may apply in any instance where a food service establishment fails to comply with the MCEHC. This procedure should be initiated on any comprehensive inspection or reinspection where there is a repeat critical violation. There are three steps to this process, Warning status, Probation status, and Revocation Action. Warning status is initiated at the time of inspection and involves a written warning comment on the inspection. Warning status lasts through the next comprehensive inspection. Probation status is initiated through the issuance of a Probationary letter sent to an establishment after administrative approval is given, and lasts for a period of six months. Revocation action is initiated at the time of inspection with on-site verification by an Environmental Health Supervisor or Lead Specialist.

1. **Warning Status** - When a repeated critical violation exists or an establishment scores more than 80 points on a comprehensive inspection, the inspection status shall be changed at the time of inspection from Approved to Warning and a statement shall appear as an inspection comment on the form as follows:

WARNING: Due to repeated, severe, and/or numerous violations noted on this inspection legal action is being initiated. Failure to permanently correct violations noted on this inspection may result in probation and/or closure of your establishment.

Any inspection with a Warning status and the Warning comment shall be thoroughly reviewed by the Environmental Health Manager or Lead Specialist. At the time of inspection review, the status will be left as Warning if appropriate. If not, the status of the inspection shall be changed to Approved.

Warning status lasts until the next comprehensive inspection on an establishment, where either problem are considered corrected, or repeated, which may result in probation.

2. **Probation Status** - When a repeated critical violation exists at an establishment where the last inspection status is Warning, or gross insanitary conditions are present probationary status will be initiated through the issuance of a probationary letter. This procedure is described in the Department Policy as a warning letter. At the time of the inspection, the inspection status shall remain Warning and a statement shall appear on the inspection form as follows:

Department policy requires that an establishment demonstrating gross insanitary conditions or failing to correct repeated violations will be placed on probationary status. Failure to maintain this establishment may result in action to revoke your permit.

Any inspection with a warning status and a probation comment shall be thoroughly reviewed by the Environmental Health Manager or Lead Specialist. If probation is warranted, requests shall go through the proper channels as described in Department Policy #10-04-16 and a probationary letter shall be sent to the operator of the establishment. If the action is not warranted, the status of the inspection shall be changed to Warning or Approved as appropriate.

If the Division Manager approves Probation status, a notation will be made in the establishment's cardex file and the inspection status will be changed to Probation. The Division Manager or a designated member of his/her staff will make the entry in the cardex file. Probation status lasts for six months from the date of issuance of the letter. Three inspections, properly spaced, must be conducted during this six month probationary period. If during anyone of these inspections, repeat, critical violations are noted, this would lead into the direction within the revocation process as stated in this draft policy.

3. **Revocation** - When a repeated critical violation exists at an establishment where the last inspection status is Probation, Revocation Action will be initiated as described in the Department Policy.

Signed Copy on File

David F. Ludwig, M.P.H., R.S.
Division Manager

Distribution: Environmental Health Division

This document supersedes any previous drafts or SOPs titled EH-IN-27.



**MARICOPA COUNTY
ENVIRONMENTAL SERVICES DEPARTMENT**

SUSPENSION OF OPERATING PERMIT

Date: _____ Permit #: _____

Establishment Name: _____

Address: _____ City, State, Zip: _____

As a result of an inspection of these premises, your operating permit, issued by Maricopa County Environmental Services, is hereby suspended. This suspension is the result of major and serious violations of the Maricopa County Environmental Health Code which present a severe and imminent health hazard to the public. The specific violations are noted on the attached inspection form.

You shall immediately cease operations of this establishment or swimming pool and/or spa. You are ordered to close and must remain closed until such time as the noted violations are corrected and you are given **written** approval by this Department to re-open. To schedule an inspection to verify compliance, you must call 602-506-6616.

If you wish a hearing concerning this suspension and order, you may do so by notifying the Director of Environmental Services immediately via fax (602-506-6789). Said hearing will be held within five (5) days of your request. If you do not request a hearing, or if the listed violations are not corrected within twenty-five (25) days of this date, your operating permit will be revoked. New permits will be required to meet current Maricopa County Environmental Health Code.

☐ I hereby acknowledge receipt of this suspension notice.

☐ At the time of inspection there was no responsible person available to accept this Notice. Therefore, this notice will be sent certified mail to the owner at the address listed on the permit to operate from the Maricopa County Environmental Services.

Received
by: _____
Print
Name: _____
Title: _____

Inspector
Name: _____
Printed
Name: _____
Phone
Number: _____

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	APPROVED	
Initiating Department: Office of the Director		Issue Date 06/7/07
Subject: Public/Semi-Public Pool/Spa Inspections, Closure Due To Lack Of Access And Immediate Suspensions		Next Review 06/01/09

I. PURPOSE

To ensure uniformity in inspecting permitted public and semi-public pool and spa facilities and ensure proper documentation of violations.

II. REFERENCES

EH-IN-43, EH-IN-29, EH-IN-36 and the Maricopa County Environmental Health Code.

III. APPLICABILITY

This Policy and Procedure applies to all divisions, unit/programs, and personnel within the Environmental Services Department.

IV. PROCEDURE

A. STARTING AN INSPECTION

1. Upon arrival at a pool, record the start time of the inspection on the paper inspection form or start an inspection in RIS (Remote Inspection System). If RIS is available, remember to check the pool variances prior to starting an inspection.
2. After the inspection has been started, attempt to locate the responsible party for the pool(s) and/or spa(s) to communicate the purpose of your visit, obtain access to the pool enclosure and verify the correct ownership for that pool. If there is a new owner that qualifies for a new permit, create the new permit on-site with a comprehensive inspection in RIS. Note: Change in mailing address without an ownership change may be entered the following day in the office if a computer is not available.

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B. INSPECTING POOL GATES, ENTRANCES AND FENCING

1. Begin your inspection while you are approaching the pool enclosure. Be observant of the condition and design of the fence and gate(s).
2. Check all entrances into the pool enclosure to assure that they are self-closing and latching from the fully opened position, half-way opened position and from a distance of 4 inches.
3. Repeat step one at all gates in the pool enclosure. Any device or mechanism that impedes or inhibits the self-closing, positive self-latching action of a gate is not acceptable and a violation must be documented on the report.
4. If a gate is rendered inoperable by management and is secured adequately with a padlock or other secure locking mechanism, it does not need to be self-closing and self-latching. In this case, a comment should be made on the inspection indicating which gates were inspected as inoperable and those that are not.
5. Walk the entire perimeter of the fence looking for structural defects, footholds or areas in disrepair. There shall be no openings or spacing of such size that a spherical object four inches in diameter can pass through.
6. Refer to Chapter VI of the Maricopa County Environmental Health Code and Standard Operating Procedure EH-IN-29 for gate and fencing regulations regarding public and semi-public pools. Any modifications to the fencing or gates will require approval by the Department. The owner may submit a letter to the Department if the latch is lower than 48" in order to meet ADA requirements.

C. CHEMICAL TESTING AND TEMPERATURE READING

1. To test the disinfectant residual, pH and alkalinity, rinse your test sample tubes with the pool water. Invert the tubes and collect a sample approximately elbow's depth in

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the water. Add the reagents to the tubes and make your reading. Document the reading to the Bathing Places Inspection Form 8800-027 on the appropriate lines or using RIS.

2. Using an approved thermocouple or minimum/maximum registering thermometer take and record any temperatures that may exceed 104°F.
3. Review the daily operating logs.

D. EQUIPMENT AND OTHER FACILITIES

1. Inspect filter equipment, rest rooms and showers if present. Note the type of filter on the inspection report. If you cannot obtain access to these areas make a comment on the inspection report and mail/fax it to the owner requiring them to provide access before the next routine inspection.
2. Inspect all safety equipment and other physical items in the pool area such as the deck, handrails, planters and skimmer baskets. Be sure to check proper signage for rules and diving restrictions in pool/spa enclosure.
3. Make a written notation on the inspection report if any modifications or additions such as changes in shape/depth, water circulations system, enclosure, disinfection system, water features, planters, pool/deck resurfacing or the installation of diving equipment have been added to the applicable pool or spa. Refer the responsible party to the Pool Plan Review Program for more information. The EHS shall use a comment No. 16 asking the owner to submit plans to MCESD.

E. WRITTEN REPORT AND COMMUNICATION WITH MANAGEMENT/OWNER

1. Record the correct inspection purpose and inspection status on the report according to the criteria below:
 - a. Inspection purpose codes:

1. Routine Inspection (IN): For use when a complaint

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is not associated with the inspection and the pool is not being closed for any reason.

2. Re-inspection (RE): For use when re-inspecting to determine correction of violations from the last inspection report.
3. Immediate Suspension (IS): For use when a pool is closed due to one of the serious health hazards listed
4. in Section E of this procedure.
5. Complaint Inspection (CI): For use when there is a complaint at a pool. State the complaint number, what the complaint is, and whether or not the complaint was verified at the bottom of the inspection report.
6. Ineffective Visit (AG): For use when an EHS is unable to gain access to a pool. See section F of this SOP.
7. Complaint Response (CR): For use when an Immediate Suspension results from a complaint or if a Routine Inspection was done within 30 days. Reference EH-IN-36 for Complaint Inspections and Responses.
8. Advisory (AH): For use when owner/operator is present but pool is posted closed prior to your arrival.
9. Close Out (CO): For use when Permanent Closure of a pool is necessary. Contact must be made with the owner to use this.

b. Inspection status codes:

1. Approved (A): For use when a pool does not have any critical violations that would warrant its closure.

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2. Suspension Notice (S): For use when a pool has an imminent health hazard that prevents its safe operation.
 3. Not Approved (NA): For use when a pool fails to qualify for a new permit. Change the status to (CD) if a Cease and Desist is requested, signed by the Director and received by the owner. NA is also used when plans have been submitted on a new permit but a final construction inspection has not yet been performed.
 4. Temporary Closure (TC): For use when a pool/spa may be temporarily closed for a period of time. For these refer to SOP EH-IN-43.
 5. Cease and Desist (CD): For use when an operator does not qualify for a permit.
 6. Close Out (CO): For use when an operator takes the
 7. appropriate steps to have a semi-public or public pool permit permanently closed.
 8. Probation (P): For use with pools/spas while in a Probationary period.
 9. Revocation (R): Legal action taken by the Department to revoke a permit to operate.
 10. Stipulation Agreement (SA): For use when revoked permits are under agreement with this department to operate.
2. Document the violations noted on the inspection report in clear concise statements. Describe the violation and give instructions for correction. Review the inspection report to ensure all applicable boxes are completely filled in.
 3. If possible, discuss your findings with the owner, manager or person in charge. Make sure he/she understands the

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violations, the public health reason for the violation, what has to be done to correct the problem, and the expected date for correction. If a Re-inspection is required select that purpose and assign a date not to exceed 25 days. Re-inspections except in those cases of permit suspension shall be done on a case by case basis to be approved by the Program Supervisor.

4. Sign the inspection form in the appropriate space provided. If your signature is not legible print your name under your signature. Ask the owner/manager or person in charge to sign the form in the appropriate area. If his/her signature is not legible ask them to print their name under their signature. If he/she refuses to sign the form explain that the signature only acknowledges receipt of the inspection report. If they still refuse to sign simply print on the signature line "Refused to sign". Give him/her the copy of the form, and retain the original for our records.
5. If there is not a manager or responsible party on the property at the time of inspection, note on the received by line that the form was not signed for. You may leave the report on the property if you can leave it in a secure place where someone responsible for the pool will find it, i.e., the manager's office, the filter equipment room, maintenance office, etc. Make a note on the form in the received by signature block as to where it was left or if it is to be mailed to the owner. If there is no place to leave the form, return it to the office and mail it to the owner or Management Company. In the event there are major violations to be corrected, resulting in permit suspension and pool closure, the report should always be mailed to the owner or operator on the next working day and an attempt to contact a responsible party via telephone should be made.

F. POOL CLOSURE DUE TO LACK OF ACCESS AND INEFFECTIVE VISITS

1. If you cannot gain access to the pool area, write on the inspection sheet that you could not gain access to conduct an inspection as required by Chapter VI of the Maricopa County Environmental Health Code. This visit should be coded as an

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"Ineffective Visit". Make a request via the written report that the owner or management company provide a key for inspection purposes or make other arrangements for access. Mail a copy of the report along with your business card to the owner or Management Company.

2. In such cases where access is not available after two attempts, Chapter I, Reg 3, b "refusal to allow inspections" will be used. The Division Manager and Enforcement Manager will be consulted and they will determine if a Notice is to be posted at the property. If the pool is posted closed or has been pad-locked closed by the operator on consecutive visits refer to SOP EH-IN-43 for Temporary Closures or Permanent Closures. Contact with the owner or legal representative of the owner will be necessary for these types of closures. Temporary closures should not be used in place of or in conjunction with Immediate Suspensions.

G. POOL CLOSURE DUE TO PERMIT SUSPENSION

1. The following health hazards are considered to be imminent health or safety hazards sufficient to warrant immediate closure of the pool:
 - a. Absence of an approved disinfectant residual.
 - b. Excessive turbidity, accumulation of scum, algae, grease, or debris in the water or on the pool surface where the water is not sufficiently clear so that the main drain outlet is clearly visible to an adult standing on the pool deck, or that a Secchi Disk 200 mm in diameter when placed at the bottom of the pool at the deepest point is clearly visible to an adult standing on the pool deck.
 - c. Filtration system inoperative.
 - d. Mechanical disinfection equipment is missing, inoperative or malfunctioning.

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- e. Broken or missing main drain covers or other suction outlet covers. Lack of an approved anti-vortex cover, in and of itself, does not warrant closure.
 - f. When required, lifeguards are not present or the required numbers of lifeguards are not present
 - g. Gates are not self-closing or self-latching or there is a breach of the pool barrier.
 - h. The gas chlorinator leaks. Also call emergency services (911).
 - i. Absence of both the ring buoy and shepherd's crook.
 - j. Electrical wires suspended over the pool.
 - k. Broken glass in the pool or pool enclosure.
 - l. Any other operational condition which may cause injury or present a danger to public health as determined by office/program supervisory staff. For instance, chlorine flashing out the test kit with excessive levels would warrant a pool suspension.
2. If any violations above warranting a permit suspension can be corrected at time of inspection by the owner/operator the inspection shall be coded as a Routine Inspection and the violation(s) along with detailed corrective action(s) shall be noted on the inspection.
3. If above violations warranting a permit suspension and pool/spa closure cannot be corrected at time of inspection, the pool shall be posted closed in a conspicuous location or at all gated entrances. Use a properly signed red "Closed Sign" for this purpose.
4. When a pool permit is suspended and ordered closed, the inspection purpose should be entered as Immediate Suspension in RIS or "IS" if entered on the paper form. The inspection

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status in RIS should be entered as "Suspension Notice" in RIS or an "S" on the paper form. The future action of a permit with Suspension Notice as the status should always be Re-inspection or "RE" on the paper form. If the inspection is a result of a citizen's complaint, a Complaint Response (CR) should be conducted in addition to and immediately after the inspection. A Complaint Response following an Immediate Suspension should show an inspection status of Suspension Notice and a future action of Re-inspection. The EHS shall address the allegations on the complaint response and document all violations on the Immediate Suspension.

5. When a pool/spa permit has been suspended the inspection status shall remain Suspension Notice with a future action of Re-inspection until violations have been corrected and approved by this Department. The pool may be reopened only after a follow up visit (re-inspection or where approved, routine inspection) where the previously observed closure violations have been corrected. Re-inspections for suspended permits should be done after 25 days from receipt of the Notice of Suspension unless requested by owner/operator at a sooner date. All pool/spa suspensions should be reported to their respective regional offices daily.
6. A Notice of Suspension of an operating permit shall be issued to the holder of the permit with the Inspection Form noting an Immediate Suspension. The Notice of Suspension form may be given to the owner or their representative on-site (property manager or HOA board member). The EHS will fill out the header of the form, print their name and list their office or county cell phone number. The top box is checked and the owner or their representative signs the form and lists their title. If no responsible person is available to accept the notice, the Notice of Suspension should be mailed to the owner along with a copy of the inspection and cover letter via Certified Mail; in this case the second box on the Notice of Suspension form is checked. The holder of the permit may immediately move to vacate the Notice of Suspension and the Director shall hear such motion within five (5) days. In no event may a Notice of Suspension remain in effect for more

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than twenty-five days. If violations are not corrected or a hearing is not requested within the twenty-five (25) day period, the regional office shall file an initial revocation request with the Division Manager or take additional action to ensure the establishment is posted closed. Refer to DPPN 10-04-16.

Note: The 25 day due process begins on the date when the Certified Mail receipt is accepted or the Notice of Suspension is signed. In cases where the certified mail is not signed or delayed, the Enforcement Manager shall be contacted.

7. A permit for a new owner cannot be approved if any of the items outlined in G. Section 1, a-1 are present and cannot be corrected at time of inspection.
8. Administrative residents (pool aides) and unregistered environmental health specialists must contact their immediate supervisor if pool conditions warrant permit suspension.

DISTRIBUTION:

Environmental Services Department

CLOSED

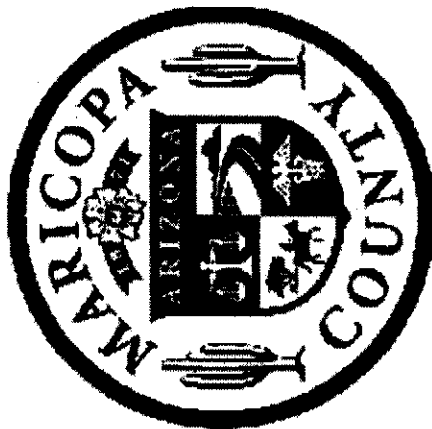
By Order of
Maricopa County Environmental Services Department

NAME OF ESTABLISHMENT

ADDRESS

PERMIT NUMBER

REASON(S) FOR CLOSURE:



This establishment fails to meet minimum standards as set forth by the Maricopa County Environmental Health Code. Detailed supporting data sheets are available upon request at the Environmental Services Department.

ENVIRONMENTAL HEALTH OFFICER

DEPUTY ENVIRONMENTAL
HEALTH OFFICER

DATE

TELEPHONE NUMBER

REMOVAL OF THIS NOTICE IS ILLEGAL EXCEPT BY ENVIRONMENTAL HEALTH OFFICER OR DEPUTY
ENVIRONMENTAL HEALTH OFFICER.

**MARICOPA COUNTY ENVIRONMENTAL SERVICES DEPARTMENT COMPLAINT
NOTICE TO APPEAR AND COMPLAINT**

Complaint # E 4152		SSN		Military		<input type="checkbox"/> Air Pollution		<input type="checkbox"/> Environmental		Enforcement Number	
Driver's License Number				State		Class		Agency Use			
Defendant		First		Middle		Last					
Residential Address				City		State		Zip		Telephone	
Sex	Weight	Height	Eyes	Hair	Origin	Date of Birth		Statutory Agent			
Business Address				City		State		Zip		Telephone	
The undersigned certifies that:											
ON	Month	Day	Year	Time		AM PM					
AT	Location			City		State		Zip			
The defendant committed the following: <input type="checkbox"/> Health Code <input type="checkbox"/> Air Quality											
A	Chapter _____ Section _____ Regulation _____				Violation				<input type="checkbox"/> Criminal <input type="checkbox"/> Civil		
	A.R.S. _____ Regulation _____ Rule _____ Section _____										
	Docket # _____				Disp. Code		Disp. Date		Sanction		
B	Chapter _____ Section _____ Regulation _____				Violation				<input type="checkbox"/> Criminal <input type="checkbox"/> Civil		
	A.R.S. _____ Regulation _____ Rule _____ Section _____										
	Docket # _____				Disp. Code		Disp. Date		Sanction		
C	Chapter _____ Section _____ Regulation _____				Violation				<input type="checkbox"/> Criminal <input type="checkbox"/> Civil		
	A.R.S. _____ Regulation _____ Rule _____ Section _____										
	Docket # _____				Disp. Code		Disp. Date		Sanction		
You must appear at:				Judge _____							
				Court _____							
				Address _____							
at the date and time indicated								Month	Day	Year	Time AM PM
CRIMINAL: <input type="checkbox"/> Without admitting guilt, I promise to appear as directed hereon. CIVIL: <input type="checkbox"/> Without admitting responsibility, I acknowledge receipt of the complaint. X _____						I certify upon reasonable grounds, I believe the person named above committed the acts described and I have served a copy of this complaint upon the defendant.					
						Complainant _____ Telephone # _____					
						Address _____					
						City _____ State _____ Zip _____					

White Copy - Court
Rev. 4/00

Pink Copy - Violator/Defendant

Blue Copy - Court

Yellow Copy - Enforcement

Case Number: _____

Justice Court Precinct: _____

**Environmental Services
Department Report**
(Please print)

Charges Requested:

- Chapter VIII, Section 2, Regulation 1, Subsection 3, 3-501.16B - Potentially Hazardous Food, Cold Holding

Name of Business: _____

Type of Business: _____ Type of Permit: Eating & Drinking 10+ Seating, Risk 3

Property Address: _____

Street
Zip

City, State

Permit Holder: _____ Owner: _____

Address: _____
Zip

Street

City, State

Assigned Inspector: _____ Inspection date: _____

Employer: Maricopa County Environmental Services DepartmentAddress: 1001 N. Central Ave, Suite 711 Phoenix, AZ 85004Phone: 602-506-6930
aupton@mail.maricopa.gov

E-mail Address:

Other Witnesses present at inspection(s): _____

DRSG, Page2:

DRSG

Page 3:

Establishment of

PUBLIC NOTICE

Maricopa County Environmental Services Department has initiated Action to:

DIRECTOR



INSPECTING OFFICIAL

DATE _____ COMPLAINT/PERMIT NUMBER _____

REMOVAL OF THIS NOTICE IS ILLEGAL EXCEPT BY THE DIRECTOR OR DESIGNEE.

Note: This notice shall be posted in a conspicuous place near the public entrance of the premises. Detailed inspection reports are available upon request at the Environmental Services Department at 602) 506-6616.